LEGISLATIVE GUIDE TO WASTE VOLUME REDUCTION AND RECYCLING

Legislative Services Agency

Note to Reader:

Research is conducted by the Legal Services Division of the Iowa Legislative Services Agency in an objective and nonpartisan manner. Although a Legislative Guide may identify issues for consideration by the General Assembly, nothing contained in a Guide should be interpreted as advocating a particular course of action. The reader is cautioned against using information contained in a Legislative Guide to draw conclusions as to the legality of a particular behavior or set of circumstances.

About the Author: This Guide was written by Tim McDermott, J.D., Wake Forest University, 1993. Mr. McDermott has been Legal Counsel with the Legal Services Division of the Legislative Services Agency since 1996. He staffs the Environmental Protection, Economic Development, and Ethics Committees and drafts legislation in the areas of the environment, economic development, and ethics.

Mr. McDermott can be reached by telephone at (515)281-3444 or by e-mail at:

timothy.mcdermott@legis.state. ia.us

December 2005

TABLE OF CONTENTS

Waste Volume Reduction and Recycling

I. Introduction.

According to the United States Environmental Protection Agency, more than 229 million tons of municipal solid waste are generated by the United States each year.[1] It is estimated that the number of land disposal sites in the nation will decline from 20,000 in 1978 to an estimated 1,200 in the year 2002.[2] In addition, it is estimated that 80 percent of the solid waste in the nation ends up in landfill sites.[3]

The general policy of this state, as adopted by statute, is to develop an effective and efficient solid waste disposal program which protects the environment and the public, and provides the most practical and beneficial use of the material and energy values of solid waste.[4] To promote these goals, a solid waste management hierarchy has been established as the solid waste management policy of the state.[5] The hierarchy, in descending order of preference, includes volume reduction at the source, recycling and reuse, and other approved techniques of solid waste management including combustion with energy recovery, combustion for waste disposal, and disposal in sanitary landfills.[6]

The purpose of this Legislative Guide is to examine Iowa's waste volume reduction and recycling statutes by providing an overview of Code chapters 455D and 455C, and various other Code sections which relate to the three elements in the solid waste hierarchy. References in the Guide to the Code are to the 2005 Code and incorporate any changes in the law included in the 2005 Code Supplement. References to the Administrative Code are current to October 2005.

II. Solid Waste Disposal.

Before examining some of the specifics of solid waste management and waste stream reduction, a general understanding of basic solid waste terminology and statutory solid waste requirements is necessary. Solid waste is defined as "garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities."[7] Solid waste does not include hazardous waste or "source, special nuclear, or by-product material as defined in the federal Atomic Energy Act of 1954, as amended to January 1, 1979, or petroleum contaminated soil which has been remediated to acceptable state or federal standards."[8] Every city and county in Iowa is required to establish and operate a comprehensive solid waste reduction program and a sanitary disposal project for final disposal of solid waste by its residents.[9] The comprehensive solid waste reduction program requirement has been interpreted to require that recycling be a part of a city's solid

[1] James T. O'Reilly, State and Local Government Solid Waste Management, §1:1 (2nd ed. 2004).
[2] Id.
[3] Id.
[4] Iowa Code § 455B.301A(1).
[5] Iowa Code § 455B.301A(1).
[6] Iowa Code § 455B.301A(1)(a-c).
[7] Iowa Code § 455B.301(20).
[8] Iowa Code § 455B.301(20).
[9] Iowa Code § 455B.302.

waste system.[10] A sanitary disposal project is defined as all facilities, appurtenances, and property connected with such facilities which are intended to facilitate the final disposition of solid waste without creating a significant hazard to public health or safety, and which project is approved by the Director of the Department of Natural Resources.[11] A sanitary landfill is a type of sanitary disposal project where solid waste is buried between layers of earth.[12]

III. Fees.

A. Tonnage Fees.

Tonnage fees are fees paid on a quarterly basis to the Department of Natural Resources by the operator of a sanitary landfill for each ton or equivalent volume of solid waste received and disposed of at the sanitary landfill.[13] Currently, the tonnage fee is $4.25 per ton of solid waste.[14] The city, county, or public or private agency responsible for solid waste management retains 95 cents of the tonnage fee collected, unless the 50 percent waste reduction goal in Code section 455D.3 is not met.[15] If the 50 percent goal is not met, then $1.20 is retained.[16] The remaining moneys are paid to the Department of Natural Resources and deposited in the Solid Waste Account within the Groundwater Protection Fund.[17] Beginning July 1, 1998, solid waste operators retained an additional 25 cents of the tonnage fee per ton of solid waste.[18] Beginning July 1, 1999, any planning area which meets the statewide average, as determined by the department, is able to retain another 10 cents of the tonnage fee per ton of solid waste.[19] The retained 25 cents and 10 cents must be used for waste reduction, recycling, or small business pollution prevention purposes and are taken from the tonnage fee which would have otherwise been allocated to funding alternatives to landfills under the Solid Waste Account within the Groundwater Protection Fund.[20] Payment to the department is due no more than 90 days following the quarter during which the fees were collected by the sanitary landfill.[21] Failure or refusal to pay the tonnage fees results in an assessment of a penalty of 2 percent of the fee due for each month the fee is overdue.[22]

Payment of the tonnage fees must be accompanied by two returns which are to be filed concurrently. One return must identify the amount of fees that are to be allocated to the Landfill Alternative Financial Assistance Program, the amount of fees retained for meeting waste reduction and recycling goals, and the amount of any additional fees paid

[10] Crippen v. City of Cedar Rapids, 618 N.W.2d 562 (Iowa 2000).
[11] Iowa Code § 455B.301(18).
[12] Iowa Code § 455B.301(19).
[13] Iowa Code § 455B.310(1), (7).
[14] Iowa Code § 455B.310(2).
[15] Iowa Code § 455B.310(4).
[16] Iowa Code § 455B.310(4).
[17] Iowa Code § 455E.11(2)(a).
[18] Iowa Code § 455B.310(3).
[19] Iowa Code § 455B.310(3).
[20] Iowa Code § 455B.310(3).
[21] Iowa Code § 455B.310(7).
[22] Iowa Code § 455B.310(8).

for failing to meet the waste reduction and recycling goals.[23] The second return must identify the use of all fees retained by the sanitary landfill owner or operator and the manner in which the fees were distributed.[24] The failure to provide either of these returns results in a penalty being assessed.[25]

The usage of moneys retained by the city, county, or public or private agency is specifically directed. The retained moneys must be used for implementing waste volume reduction and recycling requirements of comprehensive plans in the amount of 45 cents for planning areas achieving the 50 percent waste reduction goal and in the amount of 70 cents for all other planning areas.[26] The remaining moneys are to be used to meet remaining comprehensive planning requirements and other environmental protection and compliance activities.[27]

The moneys deposited in the Solid Waste Account within the Groundwater Protection Fund are further divided into two portions. Of the moneys, $1.55 must be allocated as follows:

- Forty-eight percent is allocated to the Department of Natural Resources. The Department of Natural Resources must transfer $8,000 of the amount to the Iowa Department of Public Health for duties related to reportable poisonings and illnesses. Remaining moneys shall be used for the Department of Natural Resource's administration and enforcement of a groundwater monitoring program and other related programs, for the Department of Natural Resources to develop guidelines for groundwater monitoring at sanitary disposal projects, and for the Waste Management Assistance Program of the Department of Natural Resources.[28]
- Sixteen percent is allocated to the University of Northern Iowa to develop and maintain the Iowa Waste Reduction Center.[29]
- Six and one-half percent is allocated to the Department of Natural Resources for the establishment of a program to provide competitive grants to regional coordinating councils for projects in regional economic development centers related to a by-products and waste exchange system.[30]
- For the fiscal year beginning July 1, 2005, 9.5 percent is allocated to the Department of Natural Resources to establish permanent household hazardous waste collection sites. For the fiscal year beginning July 1, 2006, 6.25 percent is allocated to the department to establish permanent household hazardous waste collection sites. Beginning July 1, 2007, 3 percent is allocated to the department to establish permanent household hazardous waste collection sites. Any moneys remaining unexpended at the end of a fiscal year for establishment of permanent household

[23] Iowa Code § 455B.310(7).
[24] Iowa Code § 455B.310(4)(d).
[25] Iowa Code § 455B.310(8).
[26] Iowa Code § 455B.310(4)(b).
[27] Iowa Code § 455B.310(4).
[28] Iowa Code § 455E.11(2)(a)(2)(a).
[29] Iowa Code § 455E.11(2)(a)(2)(b).
[30] Iowa Code § 455E.11(2)(a)(2)(c).

hazardous waste collection sites are to be used for purposes of payment of transportation costs related to household hazardous waste collection programs.[31]

- For the fiscal year beginning July 1, 2005, 3 percent is allocated to the Department of Natural Resources for payment of transportation costs related to household hazardous waste collection programs. For the fiscal year beginning July 1, 2006, 6.25 percent is allocated to the department for payment of transportation costs related to household hazardous waste collection programs. Beginning July 1, 2007, 9.5 percent is allocated to the department for payment of transportation costs related to household hazardous waste collection programs.[32]
- Eight and one-half percent is allocated to the Department of Natural Resources to provide additional toxic cleanup days or other efforts of the department to support permanent household hazardous material collection systems and special events for household hazardous material collection, and for the Natural Resource Geographic Information System.[33]
- Three percent is allocated to the Department of Economic Development for the establishment, in cooperation with the Department of Natural Resources, of a marketing initiative to assist Iowa businesses producing recycling or reclamation equipment or services, recyclable products, or products from recycled materials to expand into national markets.[34]
- Five and one-half percent is allocated to the Department of Natural Resources to provide assistance to entities developing and implementing waste reduction and minimization programs for Iowa industries.[35]

The remaining moneys must be used for funding alternatives to landfills[36] and are to be allocated as follows:

- For the implementation of the Special Waste Authorization Program, $50,000.[37]
- For the Waste Management Assistance Program of the Department of Natural Resources to be used for the by-products and waste search service at the University of Northern Iowa, $165,000.[38]
- The remaining funds collected must be used by the Department of Natural Resources to develop and implement demonstration projects for landfill alternatives, including recycling programs.[39]

[31] Iowa Code § 455E.11(2)(a)(2)(d).
[32] Iowa Code § 455E.11(2)(a)(2)(e).
[33] Iowa Code § 455E.11(2)(a)(2)(f).
[34] Iowa Code § 455E.11(2)(a)(2)(g).
[35] Iowa Code § 455E.11(2)(a)(2)(h).
[36] Iowa Code § 455E.11(2)(a)(1).
[37] Iowa Code § 455E.11(2)(a)(1)(a).
[38] Iowa Code § 455E.11(2)(a)(1)(b).
[39] Iowa Code § 455E.11(2)(a)(1)(c).

B. Tipping Fees.

When waste is disposed of at a sanitary landfill, the sanitary landfill charges the waste hauler a tipping fee, which is usually stated in dollars per ton.[40] The tonnage fee imposed by the state is included as part of the tipping fee established by a sanitary landfill. In 2004, the average municipal solid waste tipping fee in Iowa was approximately $34.32 per ton.[41] In an effort to meet the costs of implementing and operating waste stream reduction measures, many sanitary landfills in Iowa are subsidizing tipping fees with a per capita assessment.[42]

Competitive tipping fees are important because, without control of where solid waste is delivered, solid waste haulers will bypass noncompetitive solid waste facilities.[43] This bypass may lead to solid waste being shipped out-of-state or to the development of solid waste facilities which do not utilize potentially expensive alternative solid waste management technology.[44] The interstate transportation of solid waste is significant as it is estimated that 15 million tons of solid waste is moved across state boundaries every year.[45]

For the fiscal year beginning July 1, 2002, and ending June 30, 2003, the Department of Natural Resources estimated that approximately 93,000 tons of solid waste originating in Iowa were disposed of out-of-state and approximately 276,000 tons of solid waste originating out-of-state were disposed of in Iowa.[46]

C. Flow Control — Commerce Clause.

Overview. State and local governments use flow control provisions to control solid waste. These provisions exist primarily in two forms. Flow control ordinances, which are adopted by local governments pursuant to state constitutional authority or enabling statutes, require that all solid waste generated within a particular area must be delivered to a designated disposal site.[47] One of the significant results of a flow control ordinance is an assured minimum supply of solid waste for the designated disposal site which, in turn, assures a minimum revenue stream for that site.[48] This revenue stream may be used in any number of ways, including to pay annual debt service on the disposal site and to pay for facilities needed for compliance with state statutes and regulation.[49] The second form of flow control is an import ban implemented by the state which restricts the disposal of out-of-state solid waste at in-state facilities.[50] Typical motivations for implementing an import ban

---

[40] O'Reilly § 1:02.

[41] Iowa Department of Natural Resources, 2004.

[42] Iowa Society of Solid Waste Operations, Presentation to Iowa Legislative Solid Waste Reduction & Recycling Study Committee, p. 2 (1996).

[43] Id. at 3.

[44] Id.

[45] Martin E. Gold, Solid Waste Management and the Constitution's Commerce Clause, 25 Urb. Law. 21, 22 (1993).

[46] Iowa Department of Natural Resources, Iowa Tonnages for Fiscal Year 2003 (2003).

[47] Eric S. Petersen and David N. Abramowitz, Municipal Solid Waste Flow Control in the Post-Carbone World, 22 Fordham Urb. L.J. 361, 364-65 (1995).

[48] Martin E. Gold, Solid Waste Management and the Constitution's Commerce Clause, 25 Urb. Law. 21, 22 (1993).

[49] Id.; Eric S. Petersen and David N. Abramowitz, Municipal Solid Waste Flow Control in the Post-Carbone World, 22 Fordham Urb. L.J. 361, 372-73 (1995).

[50] Eric S. Petersen and David N. Abramowitz, Municipal Solid Waste Flow Control in the Post-Carbone World, 22 Fordham Urb. L.J. 361, 365 (1995).

include preventing the state from becoming a landfill for the entire nation and preserving the state's disposal space for in-state residents.

The United States Supreme Court has recently found a number of flow control provisions unconstitutional due to violations of the dormant aspect of the Commerce Clause. The Commerce Clause provides that Congress has the power to regulate interstate commerce.[51] In the absence of federal regulation, the dormant aspect of the Commerce Clause prohibits the states from unjustifiably discriminating against or burdening the interstate flow of articles of commerce.[52] The purpose behind the dormant aspect of the Commerce Clause is to prevent jeopardizing the welfare of the nation as a whole by not allowing a state to retreat into economic isolation through the placement of burdens on the flow of commerce across its borders.[53]

Flow control provisions are an area Congress has not regulated. In order for a provision to fall under either the Commerce Clause or the dormant aspect of the Commerce Clause, an article of interstate commerce must be involved. The Supreme Court has found that not only is solid waste an article of interstate commerce,[54] but the service of processing and disposing of solid waste is also an article of interstate commerce.[55]

Analytical Framework. In analyzing a flow control provision case in the context of the dormant aspect of the Commerce Clause, the first issue to consider is whether the flow control provision in question facially discriminates against interstate commerce.[56] The provision is considered virtually per se unconstitutional when the provision is found to be facially discriminatory,[57] unless it can be shown that the same, legitimate purpose could not be advanced through a reasonable nondiscriminatory alternative.[58] If the flow control provision is not facially discriminatory, the analysis moves to the second issue, which is to consider whether any incidental effects on interstate commerce are clearly excessive in relation to the putative local benefits.[59] When the incidental effects are clearly excessive, the flow control provision is considered unconstitutional.[60] In other words, when considering the benefits and burdens of a flow control provision, the provision is unconstitutional when the benefits are so insignificant that they suggest a protectionist purpose.[61]

Case Law. All of the cases discussed below are flow control provision cases decided by the United States Supreme Court. While all of the cases recognize both issues involved in a dormant Commerce Clause analysis, the majority opinion in each case only examines

---

[51] U.S. Const., Art. I, § 8, cl. 3.

[52] Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality, 511 U.S. 93, 98, 114 S. Ct. 1345, 1349, 128 L. Ed. 2d 13, 20 (1994); Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources, 504 U.S. 353, 359, 112 S. Ct. 2019, 2023, 119 L. Ed. 2d 139, 147 (1992).

[53] Oklahoma Tax Comm'n v. Jefferson Lines, Inc., 514 U.S. 175, 179-80, 115 S. Ct. 1331, 1335-36, 131 L. Ed. 2d 261, 268 (1995).

[54] Philadelphia v. New Jersey, 437 U.S. 617, 622-23, 98 S. Ct. 2531, 2534-35, 57 L. Ed. 2d 475, 480-81 (1978) (rejecting the argument that waste is valueless and therefore not an article of commerce).

[55] C & A Carbone, Inc. v. Clarkstown, 511 U.S. 383, 391, 114 S. Ct. 1677, 1682, 128 L. Ed. 2d 399, 408 (1994).

[56] Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality, 511 U.S. 93, 99, 114 S. Ct. 1345, 1350, 128 L. Ed. 2d 13, 21 (1994).

[57] Philadelphia v. New Jersey, 437 U.S. 617, 624, 98 S. Ct. 2531, 2535, 57 L. Ed. 2d 475, 481 (1978).

[58] Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality, 511 U.S. 93, 100-01, 114 S. Ct. 1345, 1351, 128 L. Ed. 2d 13, 22 (1994).

[59] Pike v. Bruce Church, Inc., 397 U.S. 137, 142, 90 S. Ct. 844, 847, 25 L. Ed. 2d 174, 178 (1970).

[60] Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality, 511 U.S. 93, 99, 114 S. Ct. 1345, 1350, 128 L. Ed. 2d 13, 21 (1994).

[61] Lisa Heinzerling, The Commercial Constitution, 1995 Sup. Ct. Rev. 217, 223 (1996).

the first issue regarding whether the law is facially discriminatory. In each case, the majority determines that the particular flow control provision is facially discriminatory.[62]

In *Philadelphia v. New Jersey*, the Court examined a New Jersey law limiting the transportation of most solid or liquid waste into New Jersey.[63] The court determined that the law discriminated against articles of commerce for the sole reason of origin.[64] The court characterized this legislation as parochial and found it to be unconstitutional since the law was discriminatory on its face and in plain effect.[65]

In *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Department of Natural Resources*, the court considered a Michigan law prohibiting a county from receiving solid waste for disposal when the waste is generated in another state or county and is not explicitly authorized for disposal by the receiving county's solid waste management plan.[66] The court rejected arguments that the state was treating out-of-state waste in the same manner as in-state waste,[67] that not all counties banned out-of-state waste,[68] and that the law was a health and safety regulation, not an economic protectionist regulation, since it was designed to allow the conservation of landfill space within each county.[69] The court found that the Michigan law allowed a county to isolate itself from the national economy,[70] and that it was a protectionist measure which was unconstitutional because it unambiguously discriminated against interstate commerce.[71]

In *Chemical Waste Management, Inc. v. Hunt*, the court examined and found unconstitutional an Alabama law imposing a higher fee on hazardous waste generated outside of Alabama and disposed of in Alabama than hazardous waste generated in and disposed of in Alabama.[72] The court found that the law facially discriminated against hazardous waste generated outside of Alabama.[73] However, Alabama argued that the higher fee served a legitimate local purpose related to the health and safety of the citizens of Alabama.[74] The court disagreed, finding that less discriminatory alternatives were available to address Alabama's health and safety concerns, including a per ton additional fee applied to all hazardous waste regardless of origin, a per mile tax on all vehicles transporting hazardous waste on Alabama roads, or a cap on the total tonnage landfilled at

---

[62] Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality, 511 U.S. 93, 108, 114 S. Ct. 1345, 1355, 128 L. Ed. 2d 13, 27 (1994); C & A Carbone, Inc. v. Clarkstown, 511 U.S. 383, 390-91, 114 S. Ct. 1677, 1682, 128 L. Ed. 2d 399, 408 (1994); Chemical Waste Management, Inc. v. Hunt, 504 U.S. 334, 342-46, 112 S. Ct. 2009, 2013-16, 119 L. Ed. 2d 121, 132-35 (1992); Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources, 504 U.S. 353, 367-68, 112 S. Ct. 2019, 2028, 119 L. Ed. 2d 139, 152 (1992); Philadelphia v. New Jersey, 437 U.S. 617, 628, 98 S. Ct. 2531, 2537-38, 57 L. Ed. 2d 475, 484 (1978).

[63] Philadelphia v. New Jersey, 437 U.S. 617, 98 S. Ct. 2531, 57 L. Ed. 2d 475 (1978).

[64] Id. at 626-27, 98 S. Ct. 2537, 57 L. Ed. 2d 483.

[65] Id. at 627, 98 S. Ct. 2537, 57 L. Ed. 2d 483.

[66] Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources, 504 U.S. 353, 112 S. Ct. 2019, 119 L. Ed. 2d 139 (1992).

[67] Id. at 361, 112 S. Ct. 2024, 119 L. Ed. 2d 148 (stating that a state may not avoid the Commerce Clause by restraining the movement of articles of commerce through subdivisions of the state, rather than through the state itself).

[68] Id. at 363, 112 S. Ct. 2025, 119 L. Ed. 2d 149 (stating that the mere reduction in scope of discrimination does not remove the discriminatory effect of the law as a whole).

[69] Id. at 366, 112 S. Ct. 2027, 119 L. Ed. 2d 151 (stating that there were nondiscriminatory alternatives which could have been used to meet the health and safety concerns).

[70] Id. at 361, 112 S. Ct. 2024, 119 L. Ed. 2d 148.

[71] Id. at 367, 112 S. Ct. 2028, 119 L. Ed. 2d 152.

[72] Chemical Waste Management, Inc. v. Hunt, 504 U.S. 334, 112 S. Ct. 2009, 119 L. Ed. 2d 121 (1992).

[73] Id. at 342, 112 S. Ct. 2013, 119 L. Ed. 2d 132.

[74] Id. at 342, 112 S. Ct. 2014, 119 L. Ed. 2d 132.

the hazardous waste disposal site.[75] In addition, the court found that while higher fees were charged to hazardous waste originating outside Alabama, the same environmental concerns applied equally to all hazardous waste regardless of origin.[76]

In *Oregon Waste Systems, Inc. v. Department of Environmental Quality*, the court considered and found unconstitutional a state law authorizing a surcharge on all solid waste generated outside of Oregon and disposed of in Oregon.[77] The court stated facial discrimination was obvious and clear in this case.[78] The court noted that Oregon failed to claim that disposal of waste from other states imposed higher costs on Oregon and that there were health and safety concerns unique to waste from other states.[79] Instead, Oregon argued that the surcharge was a compensatory tax aimed at making shippers pay their fair share of costs[80] and that the lower tax on in-state waste was a result of Oregon having an interest in spreading the costs of the disposal of in-state waste to all Oregonians through the general tax burden.[81] The court rejected the compensatory tax argument stating that surcharge is not a compensatory tax since Oregon failed to identify a specific charge on intrastate commerce which was equal to or exceeding the surcharge.[82] The court rejected the spreading the costs argument stating that the taxation scheme included a protectionist objective which could not be overlooked.[83]

In *C & A Carbone, Inc. v. Clarkstown*, the court examined a local ordinance in Clarkstown, New York, requiring all nonhazardous waste within the town to be deposited at a specific local transfer station where recyclable and nonrecyclable items would be separated, recyclable waste would be baled for shipment to a recycling facility, and nonrecyclable waste would be shipped to a suitable landfill or incinerator.[84] The ordinance was intended to ensure a minimum waste flow which Clarkstown had guaranteed to the private transfer facility as a form of financing.[85] While the ordinance allowed a local recycling center, C & A Carbone, Inc. (Carbone), to continue receiving solid waste, Carbone was required to take all nonrecyclable waste to the transfer station and to pay a tipping fee on nonrecyclable waste which had already been sorted.[86] The court found that, while the ordinance was local, the economic effects of the ordinance were interstate in nature, and the Commerce Clause was applicable.[87] The ordinance was found to be unconstitutional since it discriminated against interstate commerce by favoring a local waste processing service and since there were nondiscriminatory alternatives.[88]

---

[75] Id. at 344-45, 112 S. Ct. 2015, 119 L. Ed. 2d 134.
[76] Id. at 348, 112 S. Ct. 2017, 119 L. Ed. 2d 136.
[77] Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality, 511 U.S. 93, 114 S. Ct. 1345, 128 L. Ed. 2d 13 (1994).
[78] Id. at 99-100, 114 S. Ct. 1350, 128 L. Ed. 2d 21-22.
[79] Id. at 101, 114 S. Ct. 1351, 128 L. Ed. 2d 22-23.
[80] Id. at 102, 114 S. Ct. 1351, 128 L. Ed. 2d 23.
[81] Id. at 105-06, 114 S. Ct. 1353, 128 L. Ed. 2d 25.
[82] Id. at 104, 114 S. Ct. 1352-53, 128 L. Ed. 2d 24.
[83] Id. at 106, 114 S. Ct. 1354, 128 L. Ed. 2d 25-26.
[84] C & A Carbone, Inc. v. Clarkstown, 511 U.S. 383, 386-87, 114 S. Ct. 1677, 1680, 128 L. Ed. 2d 399, 405-06 (1994).
[85] Id.
[86] Id. at 387-88, 114 S. Ct. 1681, 128 L. Ed. 2d 406.
[87] Id. at 389, 114 S. Ct. 1681-82, 128 L. Ed. 2d 407 (rejecting the argument that the ordinance had the practical effect of a quarantine).
[88] Id. at 392-93, 114 S. Ct. 1683, 128 L. Ed. 2d 409.

IV. Waste Stream Reduction.

A. Waste Stream Reduction Goals.

Code chapter 455D provides two waste stream reduction goals for the state for the years 1994 and 2000. The baseline for these reduction goals is the waste stream as it existed on July 1, 1988.[89] The waste stream reduction goals in chapter 455D are stated in terms of goals for the planning areas in the state. A planning area is defined as "the localities and facilities involved in any aspect of the sanitary disposal project management of waste, including out-of-state localities and facilities, if applicable. A planning area may include one or more sanitary disposal projects."[90] The goals require a reduction of the amount of materials in the waste stream by 25 percent by July 1, 1994, and by 50 percent by July 1, 2000, and every year thereafter.[91] These goals are to be achieved through the use of waste volume reduction at the source, recycling, and combustion of solid waste with energy recovery and refuse-derived fuel.[92]

B. Monitoring and Incentives.

Each planning area must file a comprehensive plan prior to or at the time of an application for the initial issuance, renewal, or reissuance of a sanitary disposal project permit.[93] At a minimum, the comprehensive plan must be updated and refiled at the time of each subsequent application for the issuance, renewal, or reissuance of a sanitary disposal project permit.[94] Sanitary disposal permits are issued for terms of three years and are renewable for similar terms.[95] Among other requirements, comprehensive plan updates filed after the initial comprehensive plan has been approved must include a thorough evaluation of progress toward meeting the waste stream reduction and recycling goals.[96]

It is through the comprehensive plan updates that the Department of Natural Resources monitors the planning areas' progress toward meeting the waste stream reduction and recycling goals. As of May 2004, 25 of the 45 planning areas had achieved the 25 percent waste stream reduction level and five planning areas had already achieved over 50 percent reduction.[97]

If at any time the Department of Natural Resources determines a planning area has met or exceeded the 25 percent goal but has not met or exceeded the 50 percent goal, the planning area subtracts 60 cents from the tonnage fee which must be paid pursuant to Code section 455B.310.[98] If at any time the department determines a planning area has met or exceeded the 50 percent goal, the planning area subtracts $1.00 from the tonnage fee.[99] Both reductions in the tonnage fee are taken from the portion of the tonnage fees

[89] Iowa Code § 455D.3(1).
[90] Iowa Admin. Code 567-100.2.
[91] Iowa Code § 455D.3(1).
[92] Iowa Code § 455D.3(1).
[93] Iowa Code § 455B.306(3).
[94] Iowa Code § 455B.306(3).
[95] Iowa Admin. Code 567-102.2(1).
[96] Iowa Admin. Code 567-101.12(2).
[97] Iowa Department of Natural Resources, Goal Progress — By Percentage, May 28, 2004.
[98] Iowa Code § 455D.3(3)(a).
[99] Iowa Code § 455D.3(3)(a, b).

which would have been allocated to fund alternatives to landfills pursuant to Code section 455E.11, subsection 2, paragraph "a," subparagraph (1).[100]

If a planning area fails to meet the 25 percent goal established for July 1, 1994, the planning area is required to implement, at a minimum, certain solid waste management techniques.[101] The techniques include notifying the general public of the planning area's failure to meet the waste volume reduction goals, developing draft ordinances for establishing collection fees which are based on volume or on the number of containers used for disposal, and conducting an educational and promotional program to inform the general public regarding the manner and benefits of reducing, reusing, and recycling materials.[102] The techniques also require the remittance of an additional fee of 50 cents per ton to the Department of Natural Resources until attainment of the 25 percent goal is documented in a comprehensive plan.[103] The additional fee is deposited in the Solid Waste Account under Code section 455E.11, subsection 2, paragraph "a," to be used for funding alternatives to landfills.[104]

Since all planning areas have submitted an approved subsequent comprehensive plan since the July 1, 1994, deadline for a 25 percent reduction in the waste stream, the following table reflects all of the various combinations of incentives and tonnage fees which must be remitted to the Department of Natural Resources by the planning areas.

WASTE REDUCTION INCENTIVES

Reduction Level	Tonnage Fee Calculation	Tonnage Fee Collected	Tonnage Fee Retained	Additional Tonnage Fee Retained if Updated	Additional Amount Retained if Statewide Average is met at Least One Time
0-24 percent	$4.25 per ton PLUS 50 cents per ton	$4.75 per ton	95 cents per ton	25 cents per ton	10 cents per ton
25-49 percent	$4.25 per ton MINUS 60 cents per ton	$3.65 per ton	$1.20 per ton	25 cents per ton	10 cents per ton
50 percent +	$4.25 per ton MINUS $1.00 per ton	$3.25 per ton	95 cents per ton	25 cents per ton	10 cents per ton

V. Recycling, Landfill Disposal Prohibitions, and Related Miscellaneous Issues.

A. Landfill Disposal Prohibitions and Limitations.

Unless yard waste has been separated and is accepted by a sanitary landfill for the purposes of soil conditioning or composting, the disposal of yard waste at a sanitary landfill is prohibited.[105] The incineration of yard waste at a sanitary disposal project is also prohibited.[106] The disposal of baled solid waste at a sanitary landfill is prohibited unless the

[100] Iowa Code § 455D.3(3).
[101] Iowa Code § 455D.3(3)(a).
[102] Iowa Code § 455D.3(4).
[103] Iowa Code § 455D.3(4)(a).
[104] Iowa Code § 455D.3(4)(a).
[105] Iowa Code § 455D.9(1).
[106] Iowa Code § 455D.9(6).

solid waste is baled on-site.[107] Only waste tires which have been properly processed may be disposed of at a sanitary landfill.[108] Properly processed tires are those which are cut into pieces that are no longer than 18 inches on any side.[109] A landfill cannot refuse to accept waste tires which have been properly processed.[110] Also, the land disposal of waste oil[111] and lead acid batteries[112] is prohibited. Dealers, distributors, manufacturers, and redemption centers are prohibited from disposing of beverage containers at landfills.[113]

B. Statewide Reduction and Recycling Network.

The Statewide Waste Reduction and Recycling Network established by the Department of Natural Resources promotes the state's waste management policy and the waste management hierarchy.[114] The network also encourages waste reduction, recycling, and the proper disposal of waste.[115]

C. Waste Volume Reduction and Recycling Fund.

The Department of Natural Resources disburses moneys in the Waste Volume Reduction and Recycling Fund through the awarding of grants based upon the solid waste hierarchy to cities, counties, and central planning agencies.[116] The fund is also used to provide financial assistance for various waste reduction and recycling programs and activities and for the administration of certain solid waste and recycling functions of the department.[117] The fund receives moneys, in part, from civil penalties imposed pursuant to Code sections 455B.146, 455B.191, 455B.386, 455B.417, 455B.454, 455B.466, 455B.477, and 455D.11I, which relate to violations of air quality, water quality, hazardous conditions, hazardous waste, underground storage tanks, and waste tire statutes.[118]

D. Deposits, Rebates, and Waste Abatement Fees.

When necessary to encourage waste reduction, recycling, or proper management and disposal of components that cannot be recycled or recovered, the Environmental Protection Commission is required to recommend, annually, to the General Assembly deposits, rebates, and waste abatement fees on elements of the waste stream.[119]

E. Batteries.

In addition to the prohibition against the land disposal of lead acid batteries,[120] there are related statutes dealing with the heavy metal content and recycling of household

[107] Iowa Code § 455D.9A.
[108] Iowa Code § 455D.11(2).
[109] Iowa Admin. Code 567-117.3(1).
[110] Iowa Code § 455D.11(2).
[111] Iowa Code § 455D.13(1).
[112] Iowa Code § 455D.10(1).
[113] Iowa Code § 455C.16.
[114] Iowa Code § 455D.5(1).
[115] Iowa Code § 455D.5(1).
[116] Iowa Code § 455D.15.
[117] Iowa Code § 455D.15(3).
[118] Iowa Code §§ 29C.8A and 455D.11I.
[119] Iowa Code § 455D.8.
[120] Iowa Code § 455D.10(1).

batteries, the collection of lead acid batteries, and use of batteries in rechargeable consumer products.

Household batteries are defined as any type of dry cell battery used by consumers, including but not limited to mercuric oxide, carbon-zinc, zinc air, silver oxide, nickel-cadmium, nickel-hydride, alkaline, lithium, or sealed lead acid batteries.[121] Also, the amount of mercury that may be contained in alkaline manganese batteries and alkaline manganese button cell batteries is restricted.[122] Civil penalties are provided for violations of Code section 455D.10A, relating to household batteries.[123]

Persons selling lead acid batteries at retail must meet certain notification requirements and accept and collect, at the point of sale, used lead acid batteries when new lead acid batteries are purchased.[124] Wholesale sellers of lead acid batteries must meet similar collection requirements.[125]

A rechargeable consumer product manufactured after January 1, 1994, cannot be sold in Iowa unless: (1) the battery can easily be removed or is contained in a battery pack that is separate from the product and can be easily removed, and (2) the battery, the instruction manual, and the product package are clearly labeled to indicate the battery must be recycled or disposed of properly.[126] A manufacturer may apply for an exemption to these requirements.[127] Such an exemption is limited to a maximum of two years but it may be renewed.[128]

F. Waste Tires.

Land disposal of waste tires is prohibited unless the tires are properly processed.[129] Waste tires which have been properly processed cannot be refused by a sanitary landfill.[130]

Owners and operators of a waste tire collection or processing site must provide a financial assurance instrument to the Department of Natural Resources prior to the approval or renewal of a permit for an existing or expanding facility.[131] The purpose of the financial assurance instrument is to provide for sufficient funding for the closure of the waste tire collection or processing facility.[132] Financial assurance instruments may include instruments such as cash or surety bonds, letters of credit, a secured trust fund, a corporate guarantee, or a combination of such instruments sufficient to satisfy the financial assurance requirements.[133] Financial assurance must be provided in varying amounts depending on the date of initial existence of the waste tire collection or processing site.[134]

---

[121] Iowa Code § 455D.10A(1)(d).
[122] Iowa Code § 455D.10A(2).
[123] Iowa Code § 455D.10A(5).
[124] Iowa Code § 455D.10(2).
[125] Iowa Code § 455D.10(3).
[126] Iowa Code § 455D.10B(1).
[127] Iowa Code § 455D.10B(2).
[128] Iowa Code § 455D.10B(3).
[129] Iowa Code § 455D.11(2).
[130] Iowa Code § 455D.11(2).
[131] Iowa Code § 455D.11A(1).
[132] Iowa Code § 455D.11A(1).
[133] Iowa Code § 455D.11A(3).
[134] Iowa Code § 455D.11A(5).

A waste tire collection or processing site operated by a city or county or operated in conjunction with a sanitary landfill is not required to provide financial assurance.[135] All financial assurance requirements became effective on July 1, 1998.[136]

Owners and operators of a waste tire collection or processing site must obtain a permit from the Department of Natural Resources prior to the operation of the site.[137] The owner or operator must also pay an annual fee of $850 which is deposited in the Hazardous Substance Remedial Fund and is used for the purposes of administering the Waste Tire Collection and Processing Site Permit Program.[138]

Until June 30, 2007, moneys in the Waste Tire Management Fund will be generated through a portion of moneys received from the $5 surcharge on the issuance of a certificate of title for motor vehicles.[139]

Moneys in the Waste Tire Management Fund are used for various waste tire-related activities, including a public education and awareness initiative, market development initiatives, and waste tire stockpile abatement initiatives.[140] Moneys in the fund are also used to fund two and one-half full-time equivalent positions within the Department of Natural Resources for waste tire-related purposes.[141]

G. Local Ordinance — Curbside Collection.

When a city council or county board of supervisors provides for the collection of solid waste, the city council or county board of supervisors must consider a proposed ordinance for mandatory curbside collection of recyclable materials which have been separated from solid waste.[142]

H. Plastic Labeling.

The sale and distribution of plastic bottles and rigid plastic containers is prohibited unless the bottles and containers are labeled with a code indicating the plastic resin used to produce the bottle or container.[143] A manufacturer or distributor violating these provisions is subject to a civil penalty for each violation.[144]

I. Chlorofluorocarbons.

The sale, purchase, or use of plastic foam packaging products or food service items manufactured with chlorofluorocarbons is prohibited.[145] Beginning January 1, 1998, the sale, purchase, or use of plastic foam products, not previously prohibited, which are

[135] Iowa Code § 455D.11A(7).
[136] 1997 Iowa Acts ch. 53, § 2.
[137] Iowa Code § 455D.11B.
[138] Iowa Code § 455D.11B.
[139] Iowa Code §§ 321.52A and 455D.11C(1).
[140] Iowa Code § 455D.11C(2)(b-d).
[141] Iowa Code § 455D.11C(2)(a).
[142] Iowa Code § 455D.21.
[143] Iowa Code § 455D.12(2).
[144] Iowa Code § 455D.12(4).
[145] Iowa Code § 455D.14.

manufactured with fully halogenated chlorofluorocarbons is prohibited.[146] A person violating these provisions commits a serious misdemeanor.[147]

J. Packaging.

Manufacturers and distributors are prohibited from offering for sale, selling, or offering for promotional purposes in Iowa, a package or packaging component which includes, in the package itself, or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives, any lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements and which exceeds the concentration level established by the Department of Natural Resources.[148] Currently, the maximum concentration of lead, cadmium, mercury, and hexavalent chromium is 100 parts per million by weight.[149] Exemptions from these requirements are available for certain packaging and packaging components.[150] Certificates of compliance must be made available to purchasers, the department, and the general public upon request.[151] A person violating these provisions is guilty of a simple misdemeanor.[152]

VI. Bottle Bill.

A. Background.

Beverage container deposit laws, also known as "bottle bills," require a refundable deposit to be paid on certain beverage containers. The laws are designed to encourage a high rate of recycling of beverage containers. The frequently cited purposes for such laws include reducing beverage container litter and conservation of natural resources.[153] Iowa is one of 11 states that have a bottle bill law in effect. The states with bottle bills in effect are California, Connecticut, Delaware, Hawaii, Iowa, Maine, Massachusetts, Michigan, New York, Oregon, and Vermont. With the exception of Hawaii, all of the bottle bills were enacted during the 15-year period from 1971 to 1986.[154] Hawaii enacted a bottle bill in 2002 which was implemented on January 1, 2005.[155]

Iowa's bottle bill passed in 1978 and was approved by the Governor on May 12, 1978.[156] The Act became effective May 1, 1979, for beverage containers purchased from state liquor stores in Iowa, and on July 1, 1979, for all remaining containers covered by the Act.[157] This part of the Guide provides an overview of the history of Iowa's bottle bill,

---

[146] Iowa Code § 455D.14.

[147] Iowa Code § 455D.14.

[148] Iowa Code § 455D.19(3).

[149] Iowa Code § 455D.19(4)(c).

[150] Iowa Code § 455D.19(5).

[151] Iowa Code § 455D.19(6).

[152] Iowa Code § 455D.19(8).

[153] Cal. Pub. Res. Code § 14501(j) (West 1996); Del. Code Ann. tit. 7, § 6051 (1991); Me. Rev. Stat. Ann. tit. 32, § 1861 (West 1999); N.Y. Envtl. Conserv. Law § 27-1001 (McKinney 1997); 1A Frank P. Grad, Treatise on Environmental Law § 4.06 (1990).

[154] 1986 Cal. Stat. 1290; 1978 Conn. Acts 78-16; 61 Del. Laws 503 (1977); 1978 Iowa Acts ch. 1162; 1975 Me. Laws 739; 1981 Mass. Acts 571; 1976 Mich. Pub. Acts 1759 (initiated law); 1982 N.Y. Laws 200; 1971 Or. Laws 745; 1971 Vt. Acts & Resolves 252.

[155] 2002 Haw. Sess. Laws 176.

[156] 1978 Iowa Acts ch. 1162.

[157] 1978 Iowa Acts ch. 1162, § 14.

explains generally how Iowa's bottle bill works, and provides a brief comparison of the other jurisdictions' bottle bills.

B. Iowa's Bottle Bill.

1. History.

Since enactment, Iowa's bottle bill has been amended by 17 separate pieces of legislation.[158] Some of the amendments included minor corrections or conforming changes resulting from amendments to other areas of the Code.[159] Many of the amendments related to the inclusion of alcoholic beverage bottles in the bottle bill.[160] One amendment added the two fraudulent practice penalties now found in Code section 455C.12.[161] Other amendments related to the prohibition against the disposal of beverage containers at sanitary landfills;[162] the time requirements for distributors to accept and pick up beverage containers and to pay the refund value;[163] the definitions of redemption centers, dealer agents, and geographic territory;[164] nonrefillable containers;[165] the handling fee;[166] and the importation into the state of beverage containers.[167]

2. Understanding Iowa's Bottle Bill.

There are two steps to understanding the basics of Iowa's bottle bill. First, all the persons handling a beverage container during the beverage container's lifetime must be identified. Second, the 5 cent refund value must be traced as it passes from person to person.

a. Persons Handling a Beverage Container. A distributor is a person who engages in the sale of beverages in beverage containers to a dealer who sells such beverages.[168] A dealer is a person who engages in the sale of beverages in beverage containers to a consumer.[169] Obviously, a consumer is the person who purchases the beverage in a beverage container from a dealer for use or consumption.[170]

---

[158] 1992 Iowa Acts ch. 1242, §§ 34-35; 1992 Iowa Acts ch. 1215, § 14; 1991 Iowa Acts ch. 268, §§ 433-435; 1989 Iowa Acts ch. 272, §§ 34-37; 1989 Iowa Acts ch. 161, § 9; 1989 Iowa Acts ch. 44; 1988 Iowa Acts ch. 1200; 1987 Iowa Acts ch. 115, § 60; 1987 Iowa Acts ch. 22, §§ 3 and 12-17; 1986 Iowa Acts ch. 1245, §§ 1899C and 1899D; 1985 Iowa Acts ch. 32, §§ 111-113; 1983 Iowa Acts ch. 84; 1982 Iowa Acts ch. 1199, § 71; 1980 Iowa Acts ch. 1151; 1980 Iowa Acts ch. 1148, § 80; 1980 Iowa Acts ch. 1012, §§ 57 and 58; 1979 Iowa Acts ch. 113.

[159] 1989 Iowa Acts ch. 44; 1987 Iowa Acts ch. 115, § 60; 1986 Iowa Acts ch. 1245, §§ 1899C and 1899D; 1982 Iowa Acts ch. 1199, § 71; 1980 Iowa Acts ch. 1148, § 80; 1980 Iowa Acts ch. 1012, §§ 57 and 58.

[160] 1992 Iowa Acts ch. 1242, §§ 34 and 35; 1992 Iowa Acts ch. 1215, § 14; 1991 Iowa Acts ch. 268, §§ 433-435; 1989 Iowa Acts ch. 272, §§ 34-36; 1989 Iowa Acts ch. 161, § 9; 1987 Iowa Acts ch. 22, §§ 3 and 12-17; 1985 Iowa Acts ch. 32, §§ 111-113.

[161] 1979 Iowa Acts ch. 113, § 4.

[162] 1992 Iowa Acts ch. 1215, § 14; 1991 Iowa Acts ch. 268, § 435; 1989 Iowa Acts ch. 272, § 37.

[163] 1983 Iowa Acts ch. 84.

[164] 1988 Iowa Acts ch. 1200.

[165] 1979 Iowa Acts ch. 113, §§ 1, 2, and 6.

[166] 1980 Iowa Acts ch. 1151.

[167] 1979 Iowa Acts ch. 113, § 3.

[168] Iowa Code § 455C.1(9).

[169] Iowa Code § 455C.1(5).

[170] Iowa Code § 455C.1(4).

After a consumer returns an empty beverage container, there are two additional beverage container handlers who are important to identify. First, a dealer agent is a person who solicits or picks up empty beverage containers from a dealer for the purpose of returning the empty beverage containers to a distributor or manufacturer.[171] Second, a redemption center is a facility at which consumers may return empty beverage containers and receive the refund value.[172] A redemption center may also be the premises of a dealer if the dealer voluntarily chooses to accept and pay the refund value for empty beverage containers of a kind, size, and brand not sold by the dealer.[173] A 1998 study found that, of the 96.7 percent of consumers who return empty beverage containers, 77.8 percent of those consumers returned the empty containers to dealers while 20.9 percent returned the empty containers to redemption centers.[174] The remaining 1.3 percent either returned the containers to a location other than a dealer or redemption center or did not know where they returned them.[175]

b. Tracing the Refund Value. A beverage container begins its journey when a distributor sells a beverage in a beverage container to a dealer. In addition to the price of the product, the distributor charges the dealer an amount equivalent to the refund value of 5 cents for each new beverage in a beverage container sold to a dealer. The dealer then charges the consumer the purchase price of the product plus the refund value of 5 cents for each beverage container purchased by the consumer for consumption off the premises of the dealer.[176]

When the consumer returns an empty beverage container to a dealer or a redemption center, the dealer or redemption center accepting the empty beverage container is required to pay the consumer the refund value of 5 cents.[177] Dealers are required to accept from consumers empty beverage containers which are a kind, size, and brand sold by the dealer.[178] A distributor is required to pick up empty containers from dealers and redemption centers at least weekly, or when the distributor delivers the beverage product if deliveries are less frequent than weekly.[179] A distributor is required to accept from a dealer agent any empty container of the kind, size, and brand sold by the distributor and which was picked up by the dealer agent from a dealer within the geographic territory served by the distributor.[180] For each empty container accepted by the distributor, the distributor is required to pay the dealer,

[171] Iowa Code § 455C.1(6).
[172] Iowa Code § 455C.1(13).
[173] Iowa Admin. Code 567-107.2.
[174] Center for Social and Behavioral Research, University of Northern Iowa, Attitudes and Opinions on Iowa's Beverage Container Recycling Law, June 1998.
[175] Id.
[176] Iowa Code § 455C.2(1).
[177] Iowa Code § 455C.2(1).
[178] Iowa Code § 455C.3(1).
[179] Iowa Code § 455C.3(2).
[180] Iowa Code § 455C.3(4).

dealer agent, or person operating a redemption center the refund value of 5 cents[181] and an additional 1 cent per empty container handling fee.[182]

3. Beverage and Beverage Container Requirements.

a. Beverages. Wine, alcoholic liquor, beer, mineral water, soda water, and similar carbonated soft drinks in a liquid form are beverages whose containers are included under Iowa's bottle bill.[183] Mineral water is water naturally or artificially infused with mineral salts or gases and such water may be carbonated or uncarbonated.[184] Soda water is water that is carbonated.[185]

b. Containers. Each beverage container included under Iowa's bottle bill and sold or offered for sale in this state is required to indicate, by embossing or by a stamp, label, or other method securely affixed to the container, the refund value of the container.[186] Point type, color contrast, and other labeling requirements are provided for in the Iowa Administrative Code.[187] The container requirements do not apply to certain refillable glass beverage containers, to other refillable beverage containers exempted by the Director of the Department of Natural Resources, or to beverage containers sold aboard a commercial airliner or passenger train for consumption on the premises.[188]

4. Various Prohibitions.

Final disposal of a beverage container by a dealer, distributor, manufacturer, or person operating a redemption center, in a sanitary landfill, is prohibited.[189] This prohibition began on July 1, 1990, and does not include final disposal by a consumer.[190] Final disposal of beverage containers used to contain alcoholic liquor by a dealer, distributor, manufacturer, or a person operating a redemption center, in a sanitary landfill, is also prohibited.[191] This prohibition began on September 1, 1992, and, again, does not include final disposal by consumers.[192]

Certain types of beverage containers are not allowed to be manufactured or sold in Iowa. The manufacturing, sale, or offering for sale of any single-serving beverage container which is a plastic can or the offer for sale or sale of any beverage packaged in a single-serving plastic can is prohibited.[193] Also, the sale or offer for sale of any metal beverage container designed and constructed so that a part of the container is

[181] Iowa Code §§ 455C.3(2), (4).
[182] Iowa Code § 455C.2(2).
[183] Iowa Code § 455C.1(1).
[184] Iowa Admin. Code 567-107.2.
[185] Iowa Admin. Code 567-107.2.
[186] Iowa Code § 455C.5(1).
[187] Iowa Admin. Code 567-107.3.
[188] Iowa Code § 455C.5(3).
[189] Iowa Code § 455C.16.
[190] Iowa Code § 455C.16.
[191] Iowa Code § 455C.16.
[192] Iowa Code § 455C.16.
[193] Iowa Code § 455C.15(1).

detachable in opening the container, commonly referred to as snap-top cans, is prohibited.[194]

5. Miscellaneous Provisions.

a. Redemption Centers. In order to facilitate the return of empty beverage containers and to serve dealers of beverages, a redemption center may be established, subject to approval by the Department of Natural Resources, where consumers may return empty containers and receive payment of the refund value.[195] The department, in an order approving a redemption center, is required to identify the dealers to be served by the redemption center and the kind and brand names of empty beverage containers which the redemption center must accept.[196] Approval of a redemption center may be reviewed by the department at any time.[197]

Iowa's bottle bill also allows unapproved redemption centers to be established.[198] Such centers do not need to be approved by the department and do not relieve a dealer from the responsibility of redeeming any empty beverage containers of the kind and brand sold by the dealer.[199]

b. Refusal to Accept Containers. The general rule is that dealers are required to accept beverage containers from consumers for empty beverage containers which are a kind, size, and brand sold by the dealer.[200] However, a dealer may refuse to accept and to pay the refund value of any empty beverage container if the place of business of the dealer and the kind and brand of empty beverage containers are included in an order by the department approving a redemption center.[201] A dealer, a person operating a redemption center, a distributor, or a manufacturer may refuse to accept any empty beverage container which does not have stated on it a refund value.[202] A manufacturer or distributor may refuse to accept and to pay the refund value and handling fee on any empty beverage container that was picked up by a dealer agent from a dealer outside the geographic territory served by the manufacturer or distributor.[203]

A class "E" liquor control licensee may refuse to accept and to pay the refund value on an empty alcoholic liquor container from a dealer or a redemption center or from a person acting on behalf of or who has received empty alcoholic liquor from a dealer or a redemption center.[204] A class "E" liquor control licensee is defined as a licensee authorized to purchase alcoholic liquor from the Alcoholic Beverages Division only and to sell the alcoholic liquor to patrons for consumption off the licensed premises and to other liquor control licensees.[205]

c. Special Alcoholic Beverage Container Provisions. A few special provisions exist in Code chapter 455C which relate only to alcoholic beverage containers. Distributors selling alcoholic liquor to the Alcoholic Beverages Division of the Department of Commerce are not subject to pickup requirements and payment-of-

[194] Iowa Code § 455C.8.
[195] Iowa Code § 455C.6(1).
[196] Iowa Code § 455C.6(3).
[197] Iowa Code § 455C.6(4).
[198] Iowa Code § 455C.7.
[199] Iowa Code § 455C.7.

refund-value requirements of Code section 455C.3, subsection 2.[206] The Alcoholic Beverages Division shall provide for the disposal of empty beverage containers as required by Code section 455C.3, subsection 2, and shall give priority consideration to recycling, to the extent possible, before other appropriate disposal methods are considered.[207] Also, certain beverage containers containing alcoholic liquor and beer are exempted from labeling requirements for beverages imported into this state.[208]

6. Penalties.

Code section 455C.12 contains a number of penalty provisions for violations of various provisions of Iowa's bottle bill.[209] A person violating provisions of the bottle bill relating to the payment of refund values, the acceptance of empty beverage containers, refund value labeling requirements, and the prohibition against snap-top cans commits a simple misdemeanor.[210] A distributor who collects or attempts to collect a refund value on an empty container, with the exception of certain refillable beverage containers, when the distributor has paid the refund value on the container to a dealer, dealer agent, or person operating a redemption center commits a fraudulent practice.[211] A person also commits a fraudulent practice when the person collects or attempts to collect the refund value on an empty container a second time, with the exception of certain beverage containers which are intended to be refillable; manufactures, sells, possesses, or applies a false or counterfeit label or indication which shows a refund value, with intent to use the false or counterfeit label or indication; or collects or attempts to collect a refund value on a container with the use of a false or counterfeit label or indication showing a refund value, knowing the label or indication to be false or counterfeit.[212]

A person violating Code section 455C.15, relating to the prohibition against distribution of plastic cans, commits a serious misdemeanor.[213] A beer distributor violating Code section 455C.14, relating to the redemption of refused nonrefillable metal beverage containers, commits a simple misdemeanor.[214]

C. Other States.

As was previously stated, Iowa is one of 11 states that have a bottle bill in effect. While all of the bottle bills operate in generally a similar manner, differences exist, such as

---

[200] Iowa Code § 455C.3(1).
[201] Iowa Code § 455C.4(2).
[202] Iowa Code § 455C.4(1).
[203] Iowa Code § 455C.4(5).
[204] Iowa Code § 455C.4(4).
[205] Iowa Code § 123.30(3)(e).
[206] Iowa Code § 455C.3(2).
[207] Iowa Code § 455C.3(5).
[208] Iowa Code § 455C.5(2).
[209] Iowa Code § 455C.12.
[210] Iowa Code § 455C.12(1).
[211] Iowa Code § 455C.12(2), (5).
[212] Iowa Code § 455C.12(3), (5).
[213] Iowa Code § 455C.15(2).
[214] Iowa Code § 455C.14.

what beverage containers are covered, the refund value, the handling fee, the reclamation system, and what happens to unclaimed deposits. This Guide does not attempt to define all of the differences between the various bottle bills, but, rather, identifies some of the more significant differences among the laws as of October 2005.

1. Beverage Containers Covered.

All bottle bills cover beverage containers for beer, soft drinks, and either mineral water, soda water, or both mineral and soda water. Hawaii, Iowa, Maine, and Vermont include beverage containers for liquor in their bottle bills.[215] The Iowa and Maine laws include beverage containers for wine.[216] California, Hawaii, Maine, Michigan, New York, and Vermont all include beverage containers for mixed wine drinks or wine coolers under their bottle bills.[217] In addition to the usual beverage containers, Connecticut's and Oregon's bottle bills include containers for "similar carbonated soft drinks."[218] In Oregon, this has been interpreted to mean any nonalcoholic, carbonated drink except 100 percent coffee, tea, milk, cocoa, and fruit or vegetable drinks.[219] Delaware's bottle bill only includes plastic and glass beverage containers.[220]

The three most expansive bottle bill laws are in Hawaii, Maine, and California. The Maine law includes beverage containers for beer, liquor, wine, wine coolers, soda or noncarbonated water, and all nonalcoholic carbonated or noncarbonated drinks except for milk and dairy-derived products.[221] The California law includes beer, wine and distilled spirit coolers, carbonated and noncarbonated water including soda and mineral water, carbonated soft drinks, noncarbonated soft drinks and sport drinks, noncarbonated fruit drinks that contain any percentage of fruit juice, carbonated fruit drinks, coffee and tea drinks, and vegetable juice in containers of 16 ounces or less.[222] In Hawaii, the law includes containers for beer, ale, or other drinks produced by fermenting malt, mixed spirits, mixed wine, tea and coffee regardless of dairy-derived product content, soda, or noncarbonated water, and all nonalcoholic drinks in liquid form and intended for human consumption.[223]

2. Refund Values.

As a general rule, most bottle bills have a refund value of 5 cents. The two most notable exceptions are Michigan and California. Michigan has a refund value of 10 cents for all containers.[224] In California, consumers receive a refund of 8 cents for every two containers redeemed with two exceptions.[225] If a single or unpaired

---

[215] Haw. Rev. Stat. § 342G-101 (2004); Iowa Code § 455C.1(1); Me. Rev. Stat. Ann. tit. 32, § 1862(1) (West 2005); Vt. Stat. Ann. tit. 10, § 1521(1) (2005).

[216] Iowa Code § 455C.1(1); Me. Rev. Stat. Ann. tit. 32, § 1862(1) (West 2005).

[217] Cal. Pub. Res. Code § 14504 (West 2005); Haw. Rev. Stat. § 342G-101 (2004); Me. Rev. Stat. Ann. tit. 32, § 1862(1) (West 2005); Mich. Comp. Laws Ann. § 445.571(1)(a) (West 2005); N.Y. Envtl. Conserv. Law § 27-1003(1) (McKinney 1997); Vt. Stat. Ann. tit. 10, § 1521(1) (2005).

[218] Conn. Gen. Stat. § 22a-243 (West 2005); Or. Rev. Stat. § 459A.700(1) (2004).

[219] Or. Admin. R. 845-020-0005 (2004).

[220] Del. Code Ann. tit. 7, § 6052(b) (2005).

[221] Me. Rev. Stat. Ann. tit. 32, § 1862(1) (West 2005).

[222] Cal. Pub. Res. Code § 14504(a) (West 2005).

[223] Haw. Rev. Stat. § 342G-101 (2004).

[224] Mich. Comp. Laws Ann. § 455.571 (West 2005).

[225] Cal. Pub. Res. Code § 14560(b) (West 2005).

beverage container is redeemed in a single transaction, the consumer receives 4 cents for the container.[226] A consumer redeeming a single or unpaired beverage container of 24 fluid ounces or more receives 8 cents per container.[227] Beginning July 1, 2007, if certain recycling measures are met during the previous calendar year, the minimum refund value for beverage containers with a capacity of less than 24 ounces will be 5 cents and the minimum refund value for beverage containers with a capacity of 24 ounces or more will be 10 cents.[228]

Maine, Oregon, and Vermont have refund values of 5 cents with exceptions for certain types of containers.[229] Maine has a refund value of 15 cents for wine and liquor containers of 50 milliliters or more.[230] Vermont has a deposit amount of 15 cents for liquor containers of 50 milliliters or more.[231] Oregon has a refund value of not less than 2 cents for certified reusable beverage containers.[232]

3. Handling Fees.

Unlike refund values, there is not a common handling fee among the states. Seven states have a specific handling fee in place and the fee ranges from 1 cent in Iowa and Delaware to 3.5 cents in Maine for certain containers.[233] Oregon does not have a handling fee or any other form of reimbursement in place. Michigan and California have a form of reimbursement in place instead of a handling fee. In Michigan, distributors and manufacturers holding unclaimed deposits are required to annually pay such deposits to the state.[234] The unclaimed deposits paid to the state are deposited in the Bottle Deposit Fund and 25 percent of the fund is disbursed to dealers on an apportioned basis based on the number of empty returnable containers handled by the dealers.[235] In California, the Department of Conservation pays a handling fee of 1.8 cents per eligible container to certain qualified supermarket sites and recyclers.[236] Hawaii uses a variable rate that is determined in relation to the recycling rate during the previous calendar quarter.[237] Connecticut varies the amount of the handling fee based on the type of beverage container.[238]

4. Unclaimed Deposits.

In Iowa and under most bottle bills, the unclaimed deposits are retained by bottlers and distributors. In Michigan, all unclaimed deposits are deposited in the state's Bottle Deposit Fund.[239] Twenty-five percent of the fund is used to provide

---

[226] Cal. Pub. Res. Code § 14560(b) (West 2005).
[227] Cal. Pub. Res. Code § 14560(c) (West 2005).
[228] Cal. Pub. Res. Code § 14560(a)(3) (West 2005).
[229] Me. Rev. Stat. Ann. tit. 32, § 1863-A (West 2005); Or. Rev. Stat. § 459A.705(1) (2004); Vt. Stat. Ann. tit. 10, § 1522(a) (2005).
[230] Me. Rev. Stat. Ann. tit. 32, § 1863-A(4) (West 2005).
[231] Vt. Stat. Ann. tit. 10, § 1522(a) (2005).
[232] Or. Rev. Stat. § 459A.705(2) (2004).
[233] Del. Code Ann. tit. 7, § 6057(d) (2005); Iowa Code § 455C.2(2); Me. Rev. Stat. Ann. tit. 32, § 1866(4) (West 2005).
[234] Mich. Comp. Laws Ann. § 445.573b (West 2005).
[235] Mich. Comp. Laws Ann. § 445.573c (West 2005).
[236] Cal. Pub. Res. Code § 14585(a)(5) (West 2005).
[237] Haw. Rev. Stat. § 342G-117 (2004).
[238] Conn. Gen. Stat. § 22a-245(d) (West 2005).
[239] Mich. Comp. Laws Ann. § 445.573c(a)(5) (West 2005).

funds to dealers and the remaining 75 percent is deposited in the state's Cleanup and Redevelopment Trust Fund.[240] Once $200 million accumulates in the trust fund, interest and earnings of the trust fund are used, upon appropriation, for environmental remediation purposes.[241] Previously, in Massachusetts, unclaimed deposits were collected from bottlers and distributors and deposited in the state's Cleanup and Redevelopment Fund.[242] The Cleanup and Redevelopment Fund was repealed in 2003,[243] and currently the collected unclaimed deposits are deposited in the General Fund of the State. In Hawaii, the State Department of Health retains all unclaimed deposits that are deposited in the Deposit Beverage Container Deposit Special Fund and used for administrative and recycling-related purposes.[244]

California retains all unclaimed deposits under a reclamation system where distributors make redemption payments directly to the state for every beverage container sold or transferred to a dealer,[245] the redemption payments are deposited in the California Beverage Container Recycling Fund,[246] and the state pays refund values to processors for every beverage container received by the processor from a certified recycling center, curbside program, dropoff or collection program, or nonprofit dropoff program.[247] Moneys in the fund which are not used to pay refund values and administrative fees and administer the program are set aside to use for purposes of paying handling fees, supporting curbside programs and neighborhood dropoff programs, providing support for beverage container recycling and litter reduction programs, paying processing payments, undertaking and cooperating in statewide public education and information campaigns, and paying quality glass incentive payments.[248]

VII. Summary.

This overview has identified three general statutory schemes relating to solid waste reduction and recycling in Iowa. First, solid waste volume reduction is primarily addressed through the use of waste reduction goals and tonnage fee reduction incentives. Second, solid waste volume reduction is also addressed, to a lesser extent, by various landfill disposal prohibitions and recycling provisions. Third, tonnage fee revenues are currently used to provide financial assistance to a wide range of solid waste, solid waste reduction, and recycling related programs. In addition, this overview has revealed that any attempt to control solid waste through the use of flow control provisions should be examined carefully in light of the United States Supreme Court decisions which have found many such provisions to be unconstitutional due to Commerce Clause violations.

---

[240] Mich. Comp. Laws Ann. § 445.573c(2) (West 2005).
[241] Mich. Comp. Laws Ann. § 445.573e(5) (West 2005).
[242] Mass. Ann. Laws ch. 94, § 323D (Law. Co-op Supp. 2000).
[243] 2003 Mass. Acts 26, § 296.
[244] Haw. Rev. Stat. § 342G-104 (2004).
[245] Cal. Pub. Res. Code §§ 14523 and 14574(a) (West 2005).
[246] Cal. Pub. Res. Code § 14580(a) (West 2005).
[247] Cal. Pub. Res. Code §§ 14524 and 14573 (West 2005).
[248] Cal. Pub. Res. Code § 14581 (West 2005).

The overview has also discussed Iowa's bottle bill in relation to the bottle bills of other states. The discussion revealed that Iowa's bottle bill is very typical in terms of what beverage containers are covered, the refund values, and how unclaimed deposits are used. Also, while Iowa's bottle bill is typical for imposing a handling fee, the handling fee amount is on the low end of the scale compared to other states' handling fees.

0518RR